

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	

REPLY COMMENTS

The South Dakota Telecommunications Association (SDTA) hereby submits reply comments in response to the March 2, 2017, Notices in the above-captioned proceeding, in which the Wireline Competition Bureau (Bureau) seeks comment on a request for reconsideration of its decision to rescind the Lifeline Broadband Provider designation for nine carriers and an application for review filed by Spot On. Specifically, SDTA supports the comments filed by the National Association of Regulatory Commissioners (NARUC) that the Bureau should not reconsider its actions and designate Lifeline Broadband Providers until the Commission reconsiders its March 31, 2016, Lifeline and Link Up Reform and Modernization Third Report and Order (Order) and its lifeline procedures, which could result in changes to the designation procedure for Lifeline Broadband Providers.

As discussed by NARUC, there are a number of pending petitions seeking reconsideration of the Commission's Order, which could result in changes to the procedure for Lifeline Broadband Provider designations. In fact, the Commission has twice asked the court to hold in abeyance NARUC's appeal of the Order, in which NARUC challenges the Commission's preemption of states' authority to designate carriers eligible to receive federal Lifeline subsidies as broadband-only providers, pending action by the agency on the pending petitions for

reconsideration and clarification. This includes a request on February 3, 2017, in which the FCC General Counsel asked the court to hold the appeal in abeyance "to allow the Commission to review how to proceed in this matter and to consider whether to revisit the actions taken in the Order."¹ The Bureau should not reconsider its order and designate Broadband Lifeline Providers when the Commission has stated it will revisit its actions in establishing the procedures that should be used for such designations.

Further, the Commission's Order and its designation procedures are flawed and not in the public interest. As argued by NARUC, Section 214 of the Act reserves to the States the primary role in designating eligible telecommunications carriers (ETCs), including lifeline-only ETCs. Not only does State oversight serve to prevent fraud and abuse of the program, State involvement is necessary to determine the public interest in designating ETCs.

The Commission also may, and should, reconsider other aspects of its lifeline procedures, such as the Commission's grant of forbearance of Section 214(e)(5) and Section 214(e)(1)(A) of the Act for entities seeking designation as lifeline-only ETCs, to examine their impact on the public interest and consider whether these prior decisions have led to waste, fraud and abuse in the lifeline program.² The Commission's grant of forbearance to lifeline-only ETCs from the requirement to conform their service area to that of the rural telephone company allows such ETCs to serve only the most populated, and profitable, areas of a rural ILEC's service territory. It also effectively removes State commissions from the process of redefining rural telephone company service areas, "for the purpose of determining universal service obligations," in direct

¹ NARUC Comments at 5.

² *Lifeline and Link Up Reform et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012); *Lifeline and Link Up Reform et al.*, WC Docket No. 11-42 et al.; Memorandum Opinion and Order, 28 FCC Rcd 4859 (2013).

conflict with the express provisions of Section 214(e)(5). The Commission determined that granting this forbearance would not cause the same adverse effects intended to be addressed through the traditional creamskimming analysis, based merely on a thin finding that Lifeline support, unlike High-Cost support is not tied to the cost of serving an area. The Commission also stated that designating commissions, including the State commissions, would still be required to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest. It appears that the Commission's latest action preempting the States for Lifeline Broadband ETC designations and streamlining the designation process is at odds with its earlier expressed rationale for granting the blanket forbearance from Section 214(e)(5).

In any event, forbearance of Section 214(e)(5) does lead to the same adverse effects addressed in the traditional creamskimming analysis because the rural ILEC still must serve the entire service area while a competing provider is free to serve only the most populated and profitable part of the service area and at the same time, upon capturing a subscriber, receive a universal service subsidy. It also, obviously, reduces the ILEC's subscriber numbers and end user revenues, and, in today's environment (given the existing high cost funding budget control mechanisms) is likely to negatively affect the high cost funding that rural rate-of-return ILECs receive in exchange for their commitment to provide, throughout their service area, universal voice and broadband services. Rural ILEC ETCs use high cost universal service support and revenue from subscriber services to deploy and maintain facilities throughout their service areas. Lifeline support makes it possible for many low-income customers to subscribe to the ILECs' services, which increases total company revenue. This, in turn, makes it possible for the ILECs to continue to deploy and maintain facilities both because of the revenue provided and because high cost universal service funding is available only if voice or broadband services are

subscribed to by the end user customer. Thus, the Commission's earlier Section 214(e)(5) forbearance leaves the rural ILEC ETC with the requirement to serve the entire service area with less revenue.

A similar issue arises in connection with the Commission's decision to grant Lifeline-only ETCs a blanket forbearance from the provisions of Section 214(e)(1)(A) which require an ETC to provide any services supported by Federal universal support mechanisms "either using its own facilities or a combination of its own facilities and resale." In the Second Further Notice of Proposed Rulemaking, the Commission recognized the connection between lifeline support and infrastructure deployment and sought comment on the effect of enhanced Tribal Lifeline support on new infrastructure development and deployment. In comments, SDTA demonstrated that the automatic grant of forbearance of Section 214(e)(1)(A) of the Act was a detriment to new infrastructure deployment because it subsidized the ability of certain non-facilities based providers to capture subscribers of voice service within rural ILEC service areas, thus reducing the ILECs' end user revenues and high cost funding revenues and, in consequence, making it more difficult for ILECs to deploy and maintain broadband infrastructure.³

Although the comments of SDTA were focused on Tribal Lifeline, the same impact applies for all rural ILEC ETCs. The Commission's forbearance also resulted in millions of dollars in subsidies to ETCs that do not expand the facilities necessary to offer services, thus eliminating an important synergy to expand the deployment of broadband facilities in rural areas. In short, with the grant of automatic forbearance, the new ETC is not required to deploy facilities and the existing ILEC ETC is put in the position of potentially not being able to deploy facilities.

³ SDTA Comments filed August 31, 2015, *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71 (rel. June 22, 2015) (SFNPRM).

Rural ILEC ETCs in South Dakota have continued to deploy new broadband infrastructure and maintain high quality networks, even in the face of declining high cost support and revenues due to the Commission's Transformation Order and subsequent related orders and rules. However, continued deployment is at risk and the grant of forbearance of Sections 214(e)(5) and 214(e)(1)(A) of the Act exacerbate the problem. Accordingly, to promote the deployment of facilities in rural areas, the Commission, as it reviews the March 31, 2016, Lifeline and Link Up Reform and Modernization Third Report and Order (Order) and its lifeline procedures, should also review the prior above referenced decisions granting forbearance of Section 214(e)(5) and Section 214(e)(1)(A) of the Act for entities seeking designation as lifeline-only ETCs in the areas served by rural ILEC ETCs.

Thus, it is clear that the Commission's Lifeline Broadband Designation procedures should be revisited and that the Commission has indicated that it intends to do so. Accordingly, the Bureau should not reconsider its order and designate Broadband Lifeline Providers at this time.

Respectfully submitted,

**SOUTH DAKOTA
TELECOMMUNICATIONS
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